

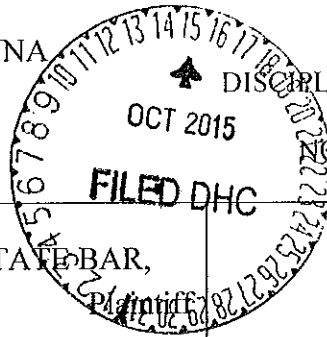
STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

v.

DEVIN FERREE THOMAS, Attorney,
Defendant



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 45

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Devin Ferree Thomas (hereafter "Defendant" or "Thomas"), was admitted to the State Bar on 22 March 1997 and is an attorney at law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant periods referred to herein, Thomas was actively engaged in the practice of law and maintained law offices in Winston-Salem, Forsyth County; Greensboro, Guilford County; and Raleigh, Wake County; North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 3 are re-alleged and incorporated herein.

5. Thomas maintained two attorney trust accounts, BB&T trust account ending in 5900 (hereinafter "trust account 1") and BB&T trust account ending in 4095 (hereinafter "trust account 2").

6. During the period of 28 October 2014 through 20 February 2015, Thomas made 21 transfers totaling \$109,500 from trust account 1 to his business account ending in 9135.

7. Thomas failed to indicate on these transfers the client balance(s) from which these transfers were purportedly made.

8. During the period of 11 February 2015 through 17 February 2015, Thomas made seven cash withdrawals totaling \$3,050 from trust account 1.

9. Upon information and belief, Thomas was not entitled to the \$109,500 he transferred from trust account 1 to his business account or the cash that he withdrew from trust account 1.

10. Thomas wrote the following checks from trust account 1 without identifying on the face of the items the client balance(s) from which the funds were purportedly drawn:

- a. Check no. 2091 for \$600 payable to Devin Thomas negotiated on 18 February 2015;
- b. Check no. 2089 for \$113.14 payable to Walmart negotiated on 20 February 2015; and
- c. Check no. 2092 for \$11.20 payable to Sheetz negotiated on 20 February 2015.

11. Upon information and belief, Thomas used the funds obtained via the checks listed in the preceding paragraph for his personal use.

12. On or about 9 February 2015 and 23 February 2015, Thomas wrote three checks drawn on trust account 1 to D. Pascal in the amount of \$400 each for "office cleaning."

13. Upon information and belief, Thomas provided the checks written in the preceding paragraph as payment for his office cleaning.

14. Upon information and belief, Thomas was not entitled to the entrusted funds he used to pay D. Pascal.

15. During the period of 6 February 2015 through 17 February 2015, Thomas made four transfers totaling \$8,100 from trust account 1 to an unknown account ending in 2596 without identifying on the face of the transfer items the client balance(s) from which each transfer was purportedly made.

16. Upon information and belief, Thomas used the funds in the account ending in 2596 for his personal use, not for the use and benefit of his clients.

17. Upon information and belief, Thomas was not entitled to the funds that he transferred from trust account 1 to the account ending in 2596.

18. On 27 February 2015, Thomas transferred the balance of the funds in trust account 1 to trust account 2. After this transfer, the balance in trust account 1 was reduced to zero.

19. The funds Thomas transferred from trust account 1 to trust account 2 were entrusted funds Thomas was required to maintain in trust for his clients.

20. After transferring the balance of funds from trust account 1, as described in paragraph 18 above, Thomas transferred entrusted funds from trust account 2 without identifying on the face of the transfer items the client balance(s) from which each transfer was purportedly made as follows:

- a. From 2 March 2015 through 23 March 2015, Thomas made six transfers totaling \$7,826.66 to his business account ending in 4109; and
- b. From 12 March 2015 through 31 March 2015, Thomas made three transfers totaling \$3,600 to the unknown account ending in 2596.

21. Upon information and belief, Thomas used the funds he transferred from trust account 2, as described in the preceding paragraph, for his personal use. These funds were not used for the benefit of Thomas's client(s).

22. Thomas also made cash withdrawals from trust account 2 in the amount of \$1,600 from 27 February 2015 through 9 April 2015.

23. Upon information and belief, Thomas used the cash he withdrew from trust account 2 for his personal use and not for the benefit of his clients.

24. Winston Factory Loft Apartments is a downtown apartment community located at 675 North Main Street, Winston-Salem, North Carolina.

25. Upon information and belief, Thomas rented an apartment at Winston Factory Loft Apartments in 2015.

26. On or about 5 March 2015, Thomas wrote check no. 91 drawn on trust account 2 made payable to Winston Factory Loft Apartments in the amount of \$345.

27. On 20 March 2015, Thomas withdrew cash from trust account 2 in the amount of \$3,450. This cash was used to purchase two official checks, one of which was payable to Winston Factory Loft Apartments in the amount of \$2,050.

28. On 1 April 2015, Thomas used cash he withdrew from trust account 2 to purchase another official check made payable to Winston Factory Loft Apartments in the amount of \$2,441.17.

29. Upon information and belief, the funds Thomas paid to Winston Factory Loft Apartments were used to satisfy Thomas's personal financial obligations. These payments were not used for the benefit of Thomas's clients.

30. Thomas was not entitled to the funds that he used to make payment to Winston Factory Loft Apartments.

31. Thomas used his clients' entrusted funds for purposes other than that for which the funds were entrusted to him.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a) By failing to identify on items drawn on his trusts accounts the client balance(s) from which the items were drawn, Thomas failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), failed to indicate on an item payable to him, the lawyer, the client balance from which the item was drawn in violation of Rule 1.15-2(h), and failed to maintain proper minimum records for his trust accounts in violation of Rule 1.15-3(b);

b) By making cash withdrawals from his trust accounts, Thomas failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), and withdrew cash from his trust account in violation of Rule 1.15-2(i); and

c) By using his clients' entrusted funds for his personal and/or business expenditures, Thomas failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), used entrusted property for his personal benefit in violation of Rule 1.15-2(j), committed a criminal act (embezzlement) that reflects adversely on his honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

SECOND CLAIM FOR RELIEF

32. Paragraphs 1 through 31 are re-alleged and incorporated herein.

The Pritchards

33. In May 2011, Thomas undertook representation of R. and D. Pritchard in a personal injury matter.

34. Thomas settled the Pritchards' personal injury claims.

35. On 29 October 2014, Thomas deposited two checks from MetLife Auto & Home on behalf of the Pritchards into trust account 1.

36. The first check was in the amount of \$15,000; the second check was in the amount of \$25,000.

37. On 6 February 2015, Thomas deposited two checks from NC Farm Bureau Mutual Insurance Co. on behalf of the Pritchards into trust account 1.

38. The first check was in the amount of \$5,496; the second check was in the amount of \$10,000.

39. Thomas made three disbursements that he identified as being made on behalf of the Pritchards: two to himself for a total of \$4,500 and one to the Bradley Law Group for \$2,500.

40. Thomas did not disburse any portion of the Pritchards' settlement proceeds to the Pritchards.

41. Thomas did not disburse any portion of the Pritchards' settlement proceeds to their medical providers.

42. After depositing the proceeds of the Pritchards' settlement into trust account 1, Thomas made several transfers to his business account ending in 9135 without identifying on the face of the transfer items the client account(s) from which each transfer was purportedly made.

43. On 11 February 2015, Thomas provided check no. 1047 written for the amount of \$15,174.51 and drawn on his business account ending in 9135 to D. Pritchard in purported partial payment of her settlement proceeds.

44. When D. Pritchard presented the check to the bank for payment, it was not honored. D. Pritchard was informed that the account was closed.

45. To date, Thomas has not paid any portion of the Pritchards' settlement proceeds to the Pritchards or their medical providers.

46. Upon information and belief, the Pritchards' settlement proceeds were among the funds that Thomas used for his personal and/or business expenditures as described in the First Claim for Relief above.

Holbrook

47. In or about June 2014, R. Holbrook retained Thomas to represent him in a personal injury matter.

48. At the outset of the representation, Thomas maintained communication with Holbrook and was responsive when Holbrook had questions about his case.

49. Beginning in or about January 2015, Thomas stopped communicating with Holbrook.

50. During Thomas's last communication with Holbrook, Thomas told Holbrook that Holbrook's claim had not yet been resolved.

51. Holbrook attempted to contact Thomas by telephone, but Thomas did not return Holbrook's calls.

52. Holbrook contacted the insurance company of the opposing party in his personal injury matter and learned that a check in settlement of Holbrook's case had been mailed to Thomas on or about 5 November 2014.

53. Thomas failed to inform Holbrook that Thomas had received Holbrook's settlement proceeds.

54. Thomas deposited the proceeds of Holbrook's settlement into trust account 1 on 14 November 2014.

55. On or about 20 March 2015, Thomas made a cash withdrawal from trust account 2 that he used to purchase an official check for \$1,400 which was made payable to Health One on behalf of Holbrook. This was the only disbursement that Thomas made on behalf of Holbrook.

56. Thomas did not disburse any portion of Holbrook's settlement proceeds to Holbrook.

57. As of 6 February 2015, the balance in trust account 1 had fallen to \$1,231.72 – less than the amount Thomas was required to maintain in trust for Holbrook.

58. From 12 January 2015 through 6 February 2015, Thomas made several transfers from trust account 1 to his BB&T business account, without identifying on the face of the transfer items the client balance(s) from which each transfer was purportedly made.

59. Thomas used the funds in his BB&T business account for his personal expenditures.

60. Upon information and belief, Holbrook's settlement proceeds were among the funds that Thomas used for his personal and/or business expenditures as described in the First Claim for Relief above.

Darby

61. In or about September 2014, R. Darby retained Thomas to represent her in a personal injury matter.

62. Initially, Thomas appeared to be very helpful – he answered questions posed by Darby's mother and met with Darby.

63. After these initial contacts, Thomas failed to communicate with Darby.

64. Darby attempted to contact Thomas by telephone, email, and she even sent a message to Thomas through his website.

65. Thomas failed to respond to Darby's attempts to contact him.

66. Upon information and belief, Thomas has failed to perform any substantive work on behalf of Darby.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

a) By failing to perform any substantive work on behalf of Darby, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

b) By failing to disburse the proceeds of their settlement to the Pritchards and Holbrook, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3, failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), and failed to promptly pay to the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m);

c) By failing to communicate with his clients and failing to respond to their attempts to communicate with him, Defendant failed to communicate in violation of Rule 1.4(a)(3)(4) and (b); and

d) By failing to inform Holbrook that he had received Holbrook's settlement check, Defendant failed to communicate in violation of Rule 1.4(a)(1)(3) and failed to notify the client of receipt of entrusted property in violation of Rule 1.15-2(l).

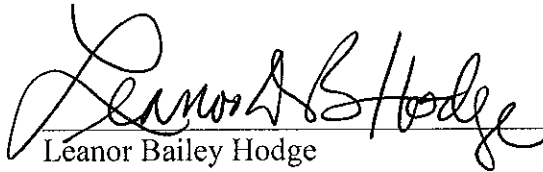
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(c) and 27 N.C. Admin. Code 1B § .0114 as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 15th day of October, 2015.



John Silverstein, Chair
Grievance Committee



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